

20044040E

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508, EODQA Rm. 7008
Cincinnati, OH 45201

Date: APR 16 2004

Employer Identification Number:

Person to Contact - I.D.
Number:

UIL : 501.00-00

Contact Telephone Numbers:

Phone
Fax

Dear

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice

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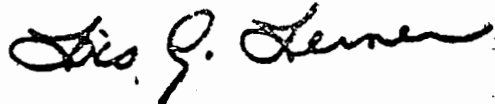
Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,



Director, Exempt Organizations -
Rulings and Agreements

Enclosures: 3
Enclosure I
Form 6018
Publication 892

ISSUE:

Does the organization qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code?

FACTS:

The information submitted discloses that the applicant was incorporated under the non-profit, non-stock corporation laws of the _____ on _____

Article IV of the Articles of Incorporation state the applicant's purpose as:

Article IV goes on to describe specific organization purposes as:

(A)

(B)

(C)

(D)

(E)

(F)

Article VI states, in part, that no substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and that the Corporation shall not participate or intervene in any political campaigns.

The Activities and Operational Information attachment to the Form 1023 describes the actual activities that the applicant had engaged in to date:

- Other applicant activities have included: advocated for a specific tax reform proposal for the _____; gathered information and formulated positions on the _____ and the “_____” option of a _____ of the proposed _____; as well as supported various economic viable projects, storm water infrastructure and the establishment of a clear air advisory committee.

The applicant asserts that the _____ project violates its premises of environmentally friendly development that maintain and improve the quality of life and economic well being of existing neighborhoods and rural communities. The applicant conducted the following with regard to the _____ issue:

- Distributed information and literature related to the economic environmental and sociological impacts of the _____ through publications, newsletters, letters to the editor and editorials.
- Conducted public information meetings, candidate forums, and membership meetings.
- Attended City, County and _____ meetings to provide its position.
- Purchased advertising space on billboards and in local newspapers in opposition to the _____
- Engaged the services of a lawyer to participate (as the principal opponents) in public hearings in _____ regarding the rezoning of land for the _____, as well as file an intervention with the Circuit Court to overturn the rezoning decision. A suit was subsequently filed to try to stop the bond financing for the project (failed).
- Held candidate forums in the _____ election for local officials – _____ and _____ Judge Executive.
- Conducted a letter writing campaign to elected officials as well as to newspapers and community groups regarding the issues.

Among the literature samples provided by the applicant:

A document entitled “_____”

_____, makes a number of statements in opposition to the _____ project, in addition to encouraging the reader to contact their County Magistrate to request that a vote on the _____ bond issue be tabled until a full public hearing is conducted by the Fiscal Court. It also encourages attendance at the next meeting of the Fiscal Court.

A newspaper article dated _____ entitled “_____” states that the Court “_____ to approve an ordinance” providing for interim financing for the _____ project.

Accordingly, in this context, it appears that the Fiscal Court was acting as a local legislative body.

Bumper stickers proclaiming, " " and " were distributed.

The newspaper article entitled " " reports that the " issue is a major factor effecting the " local elections. The article chronicles the project and states that the project had never been put to a public vote and that the election was a way for opponents to have their say (by voting for candidates opposed to the " since the sitting incumbents are supporters of the project electing those opposing the project could effect the future of the project). A member of the applicant is quoted in the articles as saying, " "

A number of letters and editorials submitted by other applicant members and officers, as well as others, reflect opposition to the " .

Copies of the applicant's newsletter called " " were provided. The " issue of the Journal contains an article entitled " " The Article reads in part:

Another article is entitled " " . The article indicates the organization's actions to file a petition affidavit with the " , and circulate the petition for a referendum drive for signatures. The articles encourages readers to make copies of the petition and circulate as well as encouraging the public to contact the County and City Attorneys regarding a public hearing on the issue.

The " issue of the Journal contains an article entitled " " and goes on to read in part:

Among the applicant's paid advertisement samples provided, the organization placed an advertisement in a local paper regarding the impending local elections. The caption reads,

" The article states the applicant's position regarding the , and encourages individuals to vote. The following appears at the end of the article:

With regard to the property tax reform issue, a document entitled "
" states that any changes in property tax structure must be made by the General Assembly (State legislature), and that " and

" Your membership solicitation literature describes the organization as "

While some of the documents published and/or circulated by the organization mention opposing viewpoints and arguments advanced by proponents of the project, minimal information is provided concerning these positions and the facts supporting them. The applicant's newsletters contain reprints or reports of articles from other sources opposing the project, but no examples of favorable articles or responses with differing viewpoints.

LAW:

Section 501(c)(3) of the Internal Revenue Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

"(3) Corporations, and any community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in or intervene in (including the publishing or distributing of

statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such sections. If any organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its Articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage otherwise than an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purpose.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(b)(3) of the Income Tax Regulations provides that an organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it—

- (i) To devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; or
- (ii) Directly or indirectly to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office; or
- (iii) To have objectives and to engage in activities which characterize it as an “action” organization as defined in paragraph (c)(3) of this section.

Section 1.501(c)(3)-1(c)(3) of the Income Tax Regulations provides that an organization is not operated exclusively for one or more exempt purposes if it is an “action” organization as defined in subdivisions (ii), (iii), or (iv) of this subparagraph.

- (ii) An organization is an “action” organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization--
 - (a) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
 - (b) Advocates the adoption or rejection of legislation.

The term “legislation”, as used in this subdivision, includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

(iii) An organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

- (iv) An organization is an "action" organization if it has the following two characteristics:
- (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and
 - (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

Section 56.4911-2(d)(1)(i) of the Income Tax Regulations provides that "legislation" includes action by the Congress, any state legislature, any local council, or similar legislative body, or by the public in a referendum, ballot initiative, constitutional amendment, or similar procedure.

Section 56.4911-2(d)(1)(ii) of the Income Tax Regulations provides that "specific legislation" includes both legislation that has already been introduced in a legislative body and specific legislative proposals that the organization either support or oppose. In the case of a referendum, ballot initiative, constitutional amendment, or other measure that is placed on the ballot by petitions signed by a required number or percentage of voters, an item becomes "specific legislation" when the petition is first circulated among voters for signature.

In Revenue Ruling 62-71, 1962-1 C.B. 85, an organization which, as its primary objective, advocates the adoption of a doctrine or theory which can become effective only by the enactment of legislation is not entitled to exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code since it is an "action" organization and thus is not operated exclusively for educational purposes. The ruling stated:

While that part of the activities of the instant organization which consists of engaging in nonpartisan analysis, study and research and making the results thereof available to the public, when considered alone, may be classified as educational within the meaning of section 501(c)(3) of the Code, the organization is primarily engaged in teaching and advocating the adoption of a particular doctrine or theory. This doctrine or theory is of a nature which can become effective only by the enactment of legislation. Since the primary objective of the organization can be attained only by legislative action, a step which the organization encourages or advocates as a

part of its announced policy, as opposed to engaging in nonpartisan analysis, study and research and making the results thereof available to the public, the organization is an "action" organization as that term is defined in section 1.501(c)(3)-1(c)(3) of the regulations.

In Revenue Ruling 78-248, 1978-1 C.B. 154, four examples are provided of certain voter education activities and whether they constitute prohibited political activity under section 501(c)(3). In example four, the exempt organization is concerned with land conservation. The organization publishes a voters guide for its members and others concerned with land conservation issues. The guide is a factual compilation of incumbents' voting records on selected land conservation issues of importance to the organization. It contains no express statements in support of or in opposition to any candidate. The guide is widely distributed to the public during an election campaign. It was determined that while the guide may provide the public with useful information, its emphasis on one area of concern indicates that its purpose is not nonpartisan voter education. By concentrating on a narrow range of issues in the voters guide and widely distributing it during an election campaign, the organization is participating in a political campaign in violation of section 501(c)(3) and is disqualified as exempt.

In Branch Ministries, Inc. v. Rossotti, 99-1 U.S.T.C. (1999), the plaintiff held tax exempt status under IRC 501(c)(3) as a church. During the presidential elections of 1992, the plaintiff expressed its concern about the moral character of Governor Clinton in a full-page advertisement in the Washington Times and in USA Today which appeared four days before the election. The advertisement proclaimed "Christians Beware. Do not put the economy ahead of the Ten Commandments." The advertisement also cited various Biblical passages and stated that "Bill Clinton is promoting policies that are in rebellion to God's laws." It then concluded with the question: "How can we vote for Bill Clinton?" The applicant identified itself as co-sponsor of the advertisement at the bottom of the advertisement. The Court ruled that the plaintiff had published a statement in opposition to a candidate for public office and was therefore no longer exempt under section 501(c)(3) of the Code.

In Christian Echoes National Ministry v. United States, 470 F.2d 849 (10th Cir. 1972), the plaintiff held tax exempt status under IRC 501(c)(3) as a religious organization. The plaintiff maintained religious radio and television broadcasts, authored publications, and engaged in evangelistic campaigns and meetings for the promotion of the social and spiritual welfare of the community, state and nation. The Court ruled that the applicant's publications contained numerous articles attempting to influence legislation by appeals to the public to react to certain issues. In addition, the applicant attempted to mold public opinion regarding legislation-all of which were attempts to influence legislation through an indirect campaign. In addition, the applicant intervened in political campaigns. It used its publications and broadcasts to attack candidates and incumbents considered too liberal. The organization engaged in substantial activity to influence legislation (action organization) and engaged in political activity both of which violated IRC 501(c)(3) and resulted in revocation of tax-exempt status.

The court in Haswell V. United States, 500 F.2d 1133 (Ct. Cl. 1974), cert. denied, 419 U.S. 1107 (1975), discussed the meaning of "nonpartisan analysis" under action organization Reg. 1.501(c)(3)-1(c)(3)(iv). The court noted by analogy the definition under IRC 4945(e) and

regulations thereunder, which make it clear that projects designed to present information on one side of a legislative controversy, or that fail to report available information that would tend to dispute conclusion that are advocated, are partisan, and stated that nonpartisan analysis requires a fair exposition of both sides of an issue. The court also noted that the term "nonpartisan" relates to issues rather than organized political parties. The court concluded that the organization's materials were partisan and prepared in a manner that would present most forcefully its position, rather than being full and fair objective exposition that would enable the audience to reach an independent conclusion.

Revenue Ruling 86-95, 1986-2 C.B. 73, holds that an organization that conducts public forums involving political candidates in which both the format and content of the forum are presented in a neutral manner will not constitute political activity within the meaning of IRC 501(c)(3).

Revenue Procedure 86-43, 1986-2 C.B. 729, discusses the Service's position with respect to the "educational" exemption as it pertains to advocacy organizations, employing a so-called "methodology test." The Rev. Proc. indicates that the Service will maintain a position of disinterested neutrality with respect to the beliefs advocated by an organization, and will focus on the method used by the organization in advocating its position. The methods used by the organization to develop and present its views will not be considered educational if it fails to provide a factual foundation for the viewpoint being advocated, or if it fails to provide a development of the relevant facts that would materially aid a listener or reader in a learning process. The presence of any of the following factors in the presentations made by the organization is indicative that the method used by the organization is not educational:

- 1) The presentation of viewpoints unsupported by facts is a significant portion of the organization's communications.
- 2) The facts that purport to support the viewpoints are distorted.
- 3) The organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations.
- 4) The approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter.

The Service indicated, however, that an organization's advocacy may be educational in exceptional circumstances even if one or more of these factors is present, and that all of the facts and circumstances will be considered.

Application of Law:

Section 1.501(c)(3)-1(a)(1) of the Regulations provides for two requirements that an organization must satisfy in order to be considered tax exempt under section 501(c)(3) of the Code—it must be both organized and operated for section 501(c)(3) purposes.

The applicant's Articles of Incorporation state that the organization is organized and operated for civic purposes within the meaning of section 501(c)(3) of the Code. Under section 501(c)(3) of the Code, civic purposes are not listed. Likewise, the specific purposes of the organization are not reflected under section 501(c)(3) of the Code. The Articles do not limit the applicant's purposes to one or more exempt purposes (Regulations section 1.501(c)(3)-1(b)(1)(i)). Also, the specific purpose in the Articles, (B) To encourage and support proper implementation of legitimate policies of county comprehensive plans adopted according to state laws and regulations with the purpose of preserving, conserving and efficiently utilizing for the greatest good all the natural and historic and cultural assets currently existing, implies that the organization objective may result in the applicant engaging in activities which characterize it as an "action" organization (Regulations section 1.501(c)(3)-1(b)(3)(iii)). Therefore, the applicant does not meet the organizational test under section 501(c)(3) of the Code.

The applicant indicates that at least % of its activities have involved the issue. The is a project of the which the applicant is opposed to. The Regulations (section 56.4911-2(d)(1)(i)) define "legislation" as action by any local council or similar governing body. The primary objective of the applicant has been to get the project dropped by advising the public regarding the purported failures of the project plan. Therefore, its objective may be attained only by defeat of said legislation (). While the project was not initially subject to public vote, the applicant engaged in distribution of literature, presentations and letter writing advocating its position. A review of the literature, articles and advertisements provided indicate that the applicant did not present a nonpartisan analysis of the project, but advocated for the project to be dropped. The literature often contained inflammatory statements. The applicant urged the public to contact local officials regarding public meetings on the , attend county meetings and to participate in a referendum. The applicant filed an intervention on the zoning issue of the project and became a participant to a lawsuit to try and stop the bond financing for the . In addition, the applicant placed ads during the local county elections in , which clearly advocated the applicant's opposition to any candidate who supported the project. The ad suggested that voting for candidates who did not support the project would essentially aid in the cause to get the project dropped.

Additionally, the applicant's involvement in promotion of "Tax Reform" involves attempts to influence legislation. The applicant's own literature states that its goal of tax reform can be accomplished only by legislative action, and actively advocates promoting a particular plan of tax reform to State legislators.

While the applicant's governing documents stated that it would not engage substantially in propaganda or attempts to influence legislation, its actual activities are inconsistent with these statements. The activities of the applicant characterize it as an action organization under Regulations Section 1.501(c)(3)-1(c)(3).

The applicant is similar to the organization in Revenue Ruling 62-71 where the primary objective of the organization could be attained only by legislative action, a step which the organization

encouraged or advocated as a part of its announced policy, as opposed to engaging in nonpartisan analysis, study and research and making the results thereof available to the public.

Like the organization in Revenue Ruling 78-248, the applicant participated in a political campaign in violation of section 501(c)(3). While applicant's literature contained no express statements in support of or in opposition to any specific candidate, it was widely distributed to the public during an election campaign and its emphasis on one area of concern indicates that its purpose is not nonpartisan voter education. Voters were encouraged to vote for or against candidates based on a candidate's position with respect to the _____ issue. It also has not been established that applicant's "candidate forums" were conducted in a nonpartisan manner similar to the organization described in Rev. Rul. 86-95.

In the court case Branch Ministries, Inc. v. Rossotti, the court ruled that the plaintiff had published a statement in opposition to a candidate for public office and was therefore no longer exempt under section 501(c)(3) of the Code. Similarly, the applicant placed an ad in a newspaper with statements which questioned the pro-Transpark candidates' leadership abilities based on the Transpark issue. The applicant's ad is in opposition to candidates for public office and therefore violates the political activity prohibition under section 501(c)(3) of the Code.

The applicant is also similar to the organization in Christian Echoes National Ministry v. United States. The applicant, like that organization, has engaged in substantial activity to influence legislation (action organization) and engaged in political activity, both of which violate section 501(c)(3) of the Code.

Like the organization considered in the Haswell case, the applicant's activities do not constitute nonpartisan analysis, in that they do not provide a "full and fair" exposition of opposing viewpoints.

Additionally, the applicant's advocacy activities do not satisfy the "methodology test" discussed in Rev. Proc. 86-43. Its literature includes numerous inflammatory and derogatory terms and statements, and provides minimal factual information concerning the arguments advanced by those who are not in agreement with its position.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such sections. If any organization fails to meet either the organizational test or the operational test, it is not exempt.

Applicant's Position:

The applicant maintains, in correspondence dated November 23, 2003, that the applicant's civic purposes have been carried out by educating the public with regard to the _____ project. The applicant states that its Articles of Incorporation were formulated with the help of an attorney to comply with Section 501(c)(3) and that since the project "

” it is consistent with its purposes in the Articles of Incorporation. The applicant considers all of its activities educational in compliance with section 501(c)(3). Applicant maintains that is merely educating the public on community issues and encouragement of civic responsibilities (such as participation on civic processes and exercising the right to vote).

Service's Response to Applicant's Position:

The Service does not agree with the applicant. While the organization considers its activities educational, it is the opinion of the Service, for the reasons discussed above, that the applicant's activities constitute that of an action organization attempting to influence legislation as well as participating in political activity; moreover, the applicant's activities are not “educational” within the meaning of the Code and Regulations.

Conclusion:

It is the opinion of the Internal Revenue Service, based on the information submitted, that the applicant does not meet the requirements for exemption as an organization described in section 501(c)(3) of the Internal Revenue Code because it is not organized and operated exclusively for purposes described in Code section 501(c)(3).

Form 6018
(Rev. Aug. 1983)

Department of the Treasury - Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

N/A

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption

☐ Revocation of exemption, effective.

☐ Modification of exemption from section 501(c)() to section 501(c)(), effective

☐ Classification as a private foundation described in section 509(a), effective ****

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)(), effective

☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date

Form 6018 Instructions

Do not use this consent if the organization is subject to the declaratory provisions of section 7428 and has submitted a protest of adverse action.

This consent should be signed by hand (do not type, stamp or print) with the name of the organization, followed by the signature(s) and titles(s) of the person(s) authorized to sign on behalf of the organization. An attorney or agent may sign provided the action is specifically authorized by a power of attorney. If the power of attorney was not previously filed, please include it with this form.

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